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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 CASS WILSON, and DOUGLAS
13 KRUSCHEN, Individually and On Behalf of
All Others Similarly Situated and the General
Public,

14 Plaintiffs,
15 v.
16 HEWLETT-PACKARD COMPANY,
17 Defendant.

No. C-09-2253 RMW

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

[Re Docket No. 30]

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20 Defendant Hewlett-Packard Company's Motion to Dismiss Plaintiffs' Second Amended
Complaint came on for hearing before the court on January 15, 2010. Plaintiffs oppose the motion.
Having considered the papers submitted by the parties and the arguments of counsel, and for good
cause appearing, defendant's motion to dismiss is granted, with leave to amend.

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28 The court is not satisfied that the allegations in the Second Amended Complaint are
sufficient to plausibly allege a defect in the HP laptop computers that creates an unreasonable safety
risk. The court is also concerned that the asserted claims all involve fraudulent intent, but few if any
facts are pleaded from which an inference of knowledge of the allegedly hazardous defect could be
drawn. Mere allegations of a design defect are not enough, and the specific consumer complaints
identified in paragraph 34 of the Second Amended Complaint are either undated or were made after

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS—No. C-09-2253 RMW
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1 the named plaintiffs had already purchased their laptops. The allegations are not sufficient to
2 establish (if proven) that defendant had knowledge of the alleged defect and safety hazard prior to
3 the sale of the computers to the plaintiffs and putative class.

4 Accordingly, the motion to dismiss is granted, and plaintiffs are granted 30 days leave to file
5 a further amended complaint.

6 The Case Management Conference calendared for January 15, 2010 is vacated and shall be
7 scheduled to occur after the pleadings are closed.

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9 DATED: 1/15/10



10 RONALD M. WHYTE
11 United States District Judge

1 **Notice of this document has been electronically sent to:**

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10 Counsel are responsible for distributing copies of this document to co-counsel that have not
11 registered for e-filing under the court's CM/ECF program.

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15 **Dated:** 1/15/10

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Chambers of Judge Whyte

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